



Senate

General
Assembly

File No. 376

February Session, 2006

Substitute Senate Bill No. 359

Senate, April 5, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING COMPETENCY TO STAND TRIAL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-56d of the 2006 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2006*):

4 (a) A defendant shall not be tried, convicted or sentenced while [he]
5 the defendant is not competent. For the purposes of this section, a
6 defendant is not competent if [he] the defendant is unable to
7 understand the proceedings against him or her or to assist in his or her
8 own defense.

9 (b) A defendant is presumed to be competent. The burden of
10 proving that the defendant is not competent by a preponderance of the
11 evidence and the burden of going forward with the evidence are on the
12 party raising the issue. The burden of going forward with the evidence
13 shall be on the state if the court raises the issue. The court may call its

14 own witnesses and conduct its own inquiry.

15 (c) If, at any time during a criminal proceeding, it appears that the
16 defendant is not competent, counsel for the defendant or for the state,
17 or the court, on its own motion, may request an examination to
18 determine the defendant's competency.

19 (d) If the court finds that the request for an examination is justified
20 and that, in accordance with procedures established by the judges of
21 the Superior Court, there is probable cause to believe that the
22 defendant has committed the crime for which [he] the defendant is
23 charged, the court shall order an examination of the defendant as to his
24 or her competency. The court may (1) appoint one or more physicians
25 specializing in psychiatry to examine the defendant, or (2) order the
26 Commissioner of Mental Health and Addiction Services to conduct the
27 examination either (A) by a clinical team consisting of a physician
28 specializing in psychiatry, a clinical psychologist and one of the
29 following: A clinical social worker licensed pursuant to chapter 383b or
30 a psychiatric nurse clinical specialist holding a master's degree in
31 nursing, or (B) by one or more physicians specializing in psychiatry,
32 except that no employee of the Department of Mental Health and
33 Addiction Services who has served as a member of a clinical team in
34 the course of such employment for at least five years prior to October
35 1, 1995, shall be precluded from being appointed as a member of a
36 clinical team. If the Commissioner of Mental Health and Addiction
37 Services is ordered to conduct the examination, the commissioner shall
38 select the members of the clinical team or the physician or physicians.
39 If the examiners determine that the defendant is not competent, [they]
40 the examiners shall then determine whether there is a substantial
41 probability that the defendant, if provided with a course of treatment,
42 will regain competency within the maximum period of any placement
43 order under this section. [, and] If the examiners determine that there
44 is a substantial probability that the defendant, if provided with a
45 course of treatment, will regain competency within the maximum
46 period of any placement order under this section, the examiners shall
47 then determine whether the defendant appears to be eligible for civil

48 commitment, with monitoring by the Court Support Services Division,
49 pursuant to subdivision (2) of subsection (h) of this section. The court
50 may authorize a physician specializing in psychiatry, a clinical
51 psychologist, a clinical social worker licensed pursuant to chapter 383b
52 or a psychiatric nurse clinical specialist holding a master's degree in
53 nursing selected by the defendant to observe the examination. Counsel
54 for the defendant may observe the examination. The examination shall
55 be completed within fifteen days from the date it was ordered and the
56 [examiner or] examiners shall prepare and sign, without notarization,
57 a written report and file such report with the court within twenty-one
58 business days of the date of the order. On receipt of the written report,
59 the clerk of the court shall cause copies to be delivered immediately to
60 the state's attorney and to counsel for the defendant.

61 (e) The court shall hold a hearing as to the competency of the
62 defendant no later than ten days after [it] the court receives the written
63 report. Any evidence regarding the defendant's competency, including
64 the written report, may be introduced at the hearing by either the
65 defendant or the state. If the written report is introduced, at least one
66 of the examiners [must] shall be present to testify as to the
67 determinations in the report, unless [his] the examiner's presence is
68 waived by the defendant and the state. Any member of the clinical
69 team shall be considered competent to testify as to the team's
70 determinations. A defendant and [his] the defendant's counsel may
71 waive the court hearing only if the examiners, in the written report,
72 determine without qualification that the defendant is competent.

73 (f) If the court, after the hearing, finds that the defendant is
74 competent, [it] the court shall continue with the criminal proceedings.
75 If [it] the court finds that the defendant is not competent, [it] the court
76 shall also find whether there is a substantial probability that the
77 defendant, if provided with a course of treatment, will regain
78 competency within the maximum period of any placement order
79 permitted under this section.

80 (g) If, at the hearing, the court finds that there is not a substantial

81 probability that the defendant, if provided with a course of treatment,
82 will regain competency within the period of any placement order
83 under this section, the court shall follow the procedure set forth in
84 subsection (m) of this section.

85 (h) (1) If, at the hearing, the court finds that there is a substantial
86 probability that the defendant, if provided with a course of treatment,
87 will regain competency within the period of any placement order
88 under this section, the court shall either (A) order placement of the
89 defendant for treatment for the purpose of rendering [him] the
90 defendant competent, or (B) order placement of the defendant at a
91 treatment facility pending civil commitment proceedings pursuant to
92 subdivision (2) of this subsection.

93 (2) (A) Except as provided in subparagraph (B) of this subdivision, if
94 the court makes a finding pursuant to subdivision (1) of this subsection
95 and does not order placement pursuant to subparagraph (A) of said
96 subdivision, the court shall, on its own motion or on motion of the
97 state or the defendant, order placement of the defendant in the custody
98 of the Commissioner of Mental Health and Addiction Services at a
99 treatment facility pending civil commitment proceedings. The
100 treatment facility shall be determined by the Commissioner of Mental
101 Health and Addiction Services. Such order shall: (i) Include an
102 authorization for the Commissioner of Mental Health and Addiction
103 Services to apply for civil commitment of such defendant pursuant to
104 sections 17a-495 to 17a-528, inclusive; (ii) permit the defendant to agree
105 to request voluntarily to be admitted under section 17a-506 and
106 participate voluntarily in a treatment plan prepared by the
107 Commissioner of Mental Health and Addiction Services, and require
108 that the defendant comply with such treatment plan; and (iii) provide
109 that if the application for civil commitment is denied or not pursued
110 by the Commissioner of Mental Health and Addiction Services, or if [,
111 in the case of a defendant who is participating voluntarily in a
112 treatment plan, such defendant ceases to so participate voluntarily] the
113 defendant is unwilling or unable to comply with a treatment plan
114 despite reasonable efforts of the treatment facility to encourage the

115 defendant's compliance, the person in charge of the treatment facility,
116 or such person's designee, shall submit a written progress report to the
117 court [pursuant to subsection (j) of this section,] and the defendant
118 shall be returned to the court for a hearing pursuant to subsection (k)
119 of this section. Such written progress report shall include the status of
120 any civil commitment proceedings concerning the defendant, the
121 defendant's compliance with the treatment plan, an opinion regarding
122 the defendant's current competency to stand trial, the clinical findings
123 of the person submitting the report and the facts upon which the
124 findings are based, and any other information concerning the
125 defendant requested by the court, including, but not limited to, the
126 method of treatment or the type, dosage and effect of any medication
127 the defendant is receiving. The Court Support Services Division shall
128 monitor the defendant's compliance with any applicable provisions of
129 such order. The period of placement and monitoring under such order
130 shall not exceed the period of the maximum sentence which the
131 defendant could receive on conviction of the charges against such
132 defendant, or eighteen months, whichever is less. If the defendant has
133 complied with such treatment plan and any applicable provisions of
134 such order, at the end of the period of placement and monitoring, the
135 court shall approve the entry of a nolle prosequi to the charges against
136 the defendant or shall dismiss such charges.

137 (B) This subdivision shall not apply: (i) To any person charged with
138 a class A felony, a class B felony, except a violation of section 53a-122
139 that does not involve the use, attempted use or threatened use of
140 physical force against another person, or a violation of section 14-227a,
141 as amended, subdivision (2) of subsection (a) of section 53-21 or section
142 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b;
143 (ii) to any person charged with a crime or motor vehicle violation who,
144 as a result of the commission of such crime or motor vehicle violation,
145 causes the death of another person; or (iii) unless good cause is shown,
146 to any person charged with a class C felony.

147 (i) The placement for treatment for the purpose of rendering the
148 defendant competent shall comply with the following conditions: (1)

149 The period of placement under the order or combination of orders
150 shall not exceed the period of the maximum sentence which the
151 defendant could receive on conviction of the charges against [him] the
152 defendant or eighteen months, whichever is less; (2) the placement
153 shall be either in the custody of the Commissioner of Mental Health
154 and Addiction Services, the Commissioner of Children and Families or
155 the Commissioner of Mental Retardation or, if the defendant or the
156 appropriate commissioner agrees to provide payment, in the custody
157 of any appropriate mental health facility or treatment program which
158 agrees to provide treatment to the defendant and to adhere to the
159 requirements of this section; and (3) the court shall order the
160 placement, on either an inpatient or an outpatient basis, which [it] the
161 court finds is the least restrictive placement appropriate and available
162 to restore competency. If outpatient treatment is the least restrictive
163 placement for a defendant who has not yet been released from a
164 correctional facility, the court shall consider whether the availability of
165 [that] such treatment is a sufficient basis on which to release the
166 defendant on a promise to appear, conditions of release, cash bail or
167 bond. If the court determines that the defendant may not be so
168 released, the court shall order treatment of the defendant on an
169 inpatient basis at a mental health facility or mental retardation facility.

170 (j) The person in charge of the treatment facility, or such person's
171 designee, shall submit a written progress report to the court (1) at least
172 seven days prior to the date of any hearing on the issue of the
173 defendant's competency; (2) whenever he or she believes that the
174 defendant has attained competency; (3) whenever he or she believes
175 that there is not a substantial probability that the defendant will attain
176 competency within the period covered by the placement order; or (4)
177 whenever, within the first one hundred twenty days of the period
178 covered by the placement order, he or she believes that the defendant
179 [has been placed for treatment pending] would be eligible for civil
180 commitment [proceedings] pursuant to subdivision (2) of subsection
181 (h) of this section. [and the application for civil commitment of the
182 defendant is denied or not pursued.] The progress report shall contain:
183 (A) The clinical findings of the person submitting the report and the

184 facts on which the findings are based; (B) the opinion of the person
185 submitting the report as to whether the defendant has attained
186 competency or as to whether the defendant is making progress, under
187 treatment, toward attaining competency within the period covered by
188 the placement order; and (C) any other information concerning the
189 defendant requested by the court, including, but not limited to, the
190 method of treatment or the type, dosage and effect of any medication
191 the defendant is receiving.

192 (k) (1) When any placement order for treatment is rendered or
193 continued, the court shall set a date for a hearing, to be held within
194 ninety days, for reconsideration of the issue of the defendant's
195 competency. Whenever the court (A) receives a report pursuant to
196 subsection (j) of this section which indicates that [(A)] (i) the defendant
197 has attained competency, [(B)] (ii) the defendant will not attain
198 competency within the remainder of the period covered by the
199 placement order, [(C)] (iii) the defendant will not attain competency
200 within the remainder of the period covered by the placement order
201 absent administration of psychiatric medication for which the
202 defendant is unwilling or unable to provide consent, or [(D)] (iv) the
203 defendant [has been placed for treatment pending] would be eligible
204 for civil commitment [proceedings] pursuant to subdivision (2) of
205 subsection (h) of this section, [and the application for civil commitment
206 of the defendant is denied or not pursued] or (B) receives a report
207 pursuant to subparagraph (A)(iii) of subdivision (2) of subsection (h)
208 of this section which indicates that (i) the application for civil
209 commitment of the defendant has been denied or has not been
210 pursued by the Commissioner of Mental Health and Addiction
211 Services, or (ii) the defendant is unwilling or unable to comply with a
212 treatment plan despite reasonable efforts of the treatment facility to
213 encourage the defendant's compliance, the court shall set the matter
214 for a hearing no later than ten days after the report is received. The
215 hearing may be waived by the defendant only if the report indicates
216 that the defendant is competent. The court shall determine whether the
217 defendant is competent or is making progress toward attainment of
218 competency within the period covered by the placement order. If the

219 court finds that the defendant is competent, the defendant shall be
220 returned to the custody of the Commissioner of Correction or released,
221 if the defendant has met the conditions for release, and the court shall
222 continue with the criminal proceedings. If the court finds that the
223 defendant is still not competent but that the defendant is making
224 progress toward attaining competency, [it] the court may continue or
225 modify the placement order. If the court finds that the defendant is still
226 not competent and will not attain competency within the remainder of
227 the period covered by the placement order absent administration of
228 psychiatric medication for which the defendant is unwilling or unable
229 to provide consent, [it] the court shall proceed as provided in
230 subdivisions (2) and (3) of this subsection. If the court finds that the
231 defendant is eligible for civil commitment, the court may order
232 placement of the defendant at a treatment facility pending civil
233 commitment proceedings pursuant to subdivision (2) of subsection (h)
234 of this section.

235 (2) If the court finds that the defendant will not attain competency
236 within the remainder of the period covered by the placement order
237 absent administration of psychiatric medication for which the
238 defendant is unwilling or unable to provide consent, and after any
239 hearing held pursuant to subdivision (3) of this subsection, [it] the
240 court may order the involuntary medication of the defendant if [it] the
241 court finds by clear and convincing evidence that: (A) To a reasonable
242 degree of medical certainty involuntary medication of the defendant
243 will render the defendant competent to stand trial, (B) an adjudication
244 of guilt or innocence cannot be had using less intrusive means, (C) the
245 proposed treatment plan is narrowly tailored to minimize intrusion on
246 the defendant's liberty and privacy interests, (D) the proposed drug
247 [regime] regimen will not cause an unnecessary risk to the defendant's
248 health, and (E) the seriousness of the alleged crime is such that the
249 criminal law enforcement interest of the state in fairly and accurately
250 determining the defendant's guilt or innocence overrides the
251 defendant's interest in self-determination.

252 (3) If the court finds that the defendant is unwilling or unable to

253 provide consent for the administration of psychiatric medication, and
254 prior to deciding whether to order the involuntary medication of the
255 defendant under subdivision (2) of this subsection, the court shall
256 appoint a health care guardian who shall be a licensed health care
257 provider with specialized training in the treatment of persons with
258 psychiatric disabilities to represent the health care interests of the
259 defendant before the court. Notwithstanding the provisions of section
260 52-146e, such health care guardian shall have access to the psychiatric
261 records of the defendant. Such health care guardian shall file a report
262 with the court not later than thirty days after his or her appointment.
263 The report shall set forth such health care guardian's findings and
264 recommendations concerning the administration of psychiatric
265 medication to the defendant including the risks and benefits of such
266 medication, the likelihood and seriousness of any adverse side effects
267 and the prognosis with and without such medication. The court shall
268 hold a hearing on the matter not later than ten days after receipt of
269 such health care guardian's report and shall, in deciding whether to
270 order the involuntary medication of the defendant, take into account
271 such health care guardian's opinion concerning the health care
272 interests of the defendant.

273 (4) The state shall hold harmless and indemnify any health care
274 guardian appointed by the court pursuant to subdivision (3) of this
275 subsection from financial loss and expense arising out of any claim,
276 demand, suit or judgment by reason of such health care guardian's
277 alleged negligence or alleged deprivation of any person's civil rights or
278 other act or omission resulting in damage or injury, provided the
279 health care guardian is found to have been acting in the discharge of
280 his or her duties pursuant to said subdivision [(3)] and such act or
281 omission is found not to have been wanton, reckless or malicious. The
282 provisions of subsections (b), (c) and (d) of section 5-141d, as amended,
283 shall apply to such health care guardian. The provisions of chapter 53
284 shall not apply to a claim against such health care guardian.

285 (l) If a defendant who has been ordered placed for treatment on an
286 inpatient basis at a mental health facility or mental retardation facility

287 is released from such facility on a furlough or for work, therapy or any
288 other reason and fails to return to the facility in accordance with the
289 terms and conditions of [his] the defendant's release, the person in
290 charge of the facility, or [his] such person's designee, shall, within
291 twenty-four hours of the defendant's failure to return, report such
292 failure to the prosecuting authority for the court location which
293 ordered the placement of the defendant. Upon receipt of such a report,
294 the prosecuting authority shall, within available resources, make
295 reasonable efforts to notify any victim or victims of the crime for which
296 the defendant is charged of such defendant's failure to return to the
297 facility. No civil liability shall be incurred by the state or the
298 prosecuting authority for failure to notify any victim or victims in
299 accordance with this subsection. The failure of a defendant to return to
300 the facility in which [he] the defendant has been placed may constitute
301 sufficient cause for [his] the defendant's rearrest upon order by the
302 court.

303 (m) If at any time the court determines that there is not a substantial
304 probability that the defendant will attain competency within the
305 period of treatment allowed by this section, or if at the end of such
306 period the court finds that the defendant is still not competent, the
307 court shall either release the defendant from custody or order the
308 defendant placed in the custody of the Commissioner of Mental Health
309 and Addiction Services, the Commissioner of Children and Families or
310 the Commissioner of Mental Retardation. The commissioner given
311 custody, or the commissioner's designee, shall then apply for civil
312 commitment according to sections 17a-75 to 17a-83, inclusive, 17a-270
313 to 17a-282, inclusive, and 17a-495 to 17a-528, inclusive. The court shall
314 hear arguments as to whether the defendant should be released or
315 should be placed in the custody of the Commissioner of Mental Health
316 and Addiction Services, the Commissioner of Children and Families or
317 the Commissioner of Mental Retardation. If the court orders the release
318 of a defendant charged with the commission of a crime that resulted in
319 the death or serious physical injury, as defined in section 53a-3, of
320 another person, or orders the placement of such defendant in the
321 custody of the Commissioner of Mental Health and Addiction

322 Services, the court may, on its own motion or on motion of the
323 prosecuting authority, order, as a condition of such release or
324 placement, periodic examinations of the defendant as to [his] the
325 defendant's competency. Such an examination shall be conducted in
326 accordance with subsection (d) of this section. Upon receipt of the
327 written report as provided in subsection (d) of this section, the court
328 shall, upon the request of either party filed not later than thirty days
329 after the court receives such report, conduct a hearing as provided in
330 subsection (e) of this section. Such hearing shall be held not later than
331 ninety days after the court receives such report. If the court finds that
332 the defendant has attained competency, [he] the defendant shall be
333 returned to the custody of the Commissioner of Correction or released,
334 if [he] the defendant has met the conditions for release, and the court
335 shall continue with the criminal proceedings. Periodic examinations
336 ordered by the court under this subsection shall continue until the
337 court finds that the defendant has attained competency or until the
338 time within which the defendant may be prosecuted for the crime with
339 which [he] the defendant is charged, as provided in section 54-193 or
340 54-193a, has expired, whichever occurs first. The court shall dismiss,
341 with or without prejudice, any charges for which a nolle prosequi is
342 not entered when the time within which the defendant may be
343 prosecuted for the crime with which [he] the defendant is charged, as
344 provided in section 54-193 or 54-193a, has expired. Notwithstanding
345 the erasure provisions of section 54-142a, police and court records and
346 records of any state's attorney pertaining to a charge which is nolleed or
347 dismissed without prejudice while the defendant is not competent
348 shall not be erased until the time for the prosecution of the defendant
349 expires under section 54-193 or 54-193a. A defendant who is not civilly
350 committed as a result of an application made by the Commissioner of
351 Mental Health and Addiction Services, the Commissioner of Children
352 and Families or the Commissioner of Mental Retardation pursuant to
353 this section shall be released. A defendant who is civilly committed
354 pursuant to such an application shall be treated in the same manner as
355 any other civilly committed person.

356 (n) The cost of the examination effected by the Commissioner of

357 Mental Health and Addiction Services and of testimony of persons
358 conducting the examination effected by the commissioner shall be paid
359 by the Department of Mental Health and Addiction Services. The cost
360 of the examination and testimony by physicians appointed by the
361 court shall be paid by the Judicial Department. If the defendant is
362 indigent, the fee of the person selected by the defendant to observe the
363 examination and to testify on [his] the defendant's behalf shall be paid
364 by the Public Defender Services Commission. The expense of treating a
365 defendant placed in the custody of the Commissioner of Mental Health
366 and Addiction Services, the Commissioner of Children and Families or
367 the Commissioner of Mental Retardation pursuant to subdivision (2) of
368 subsection (h) of this section or subsection (i) of this section shall be
369 computed and paid for in the same manner as is provided for persons
370 committed by a probate court under the provisions of sections 17b-122,
371 17b-124 to 17b-132, inclusive, 17b-136 to 17b-138, inclusive, 17b-194 to
372 17b-197, inclusive, 17b-222 to 17b-250, inclusive, 17b-256, 17b-263, 17b-
373 340 to 17b-350, inclusive, as amended, 17b-689b and 17b-743 to 17b-
374 747, inclusive.

375 (o) Until the hearing is held, the defendant, if not released on a
376 promise to appear, conditions of release, cash bail or bond, shall
377 remain in the custody of the Commissioner of Correction unless
378 hospitalized as provided in sections 17a-512 to 17a-517, inclusive, as
379 amended.

380 (p) This section shall not be construed to require the Commissioner
381 of Mental Health and Addiction Services to place any violent
382 defendant in a mental institution which does not have the trained staff,
383 facilities and security to accommodate such a person.

384 (q) This section shall not prevent counsel for the defendant from
385 raising, prior to trial and while the defendant is not competent, any
386 issue susceptible of fair determination.

387 (r) Actual time spent in confinement on an inpatient basis pursuant
388 to this section shall be credited against any sentence imposed on the
389 defendant in the pending criminal case or in any other case arising out

390 of the same conduct in the same manner as time is credited for time
391 spent in a correctional facility awaiting trial.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2006</i>	54-56d
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JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect
Department of Mental Health & Addiction Services	GF - See Below

Municipal Impact: None

Explanation

This bill extends the time available for courts to permit civil commitment for mentally ill defendants. This change is likely to alter the treatment profile of these individuals under the Department of Mental Health and Addiction Services (DMHAS). Currently, about 150 individuals per year are admitted to Connecticut Valley Hospital for competency restoration. Extending this time will reduce the number of individuals in competency restoration beds, and increase the number of individuals civilly committed to regular treatment beds. This change in service is not expected to result in a net fiscal impact to DMHAS, but will allow for a more flexible utilization of current resources.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future.

OLR Bill Analysis**sSB 359*****AN ACT CONCERNING COMPETENCY TO STAND TRIAL.*****SUMMARY:**

This bill makes more mentally ill defendants eligible for civil commitment and treatment in lieu of criminal prosecution. Currently, the court rules on whether to permit civil commitment at the first competency hearing, generally about one month after the defendant's competency to stand trial is questioned. The bill, instead, makes the commitment option available for up to 120 additional days. The treatment facility head must file a progress report with the court to raise this issue.

By law, defendants who complete their treatment under civil commitment are entitled to dismissal of the criminal charges or an order of nolle prosequi (no further action).

The bill also requires the appointment of a health care guardian when the court is considering a motion to involuntarily medicate an incompetent person who refuses to give his consent.

EFFECTIVE DATE: October 1, 2006

CIVIL COMMITMENT PROGRAM

By law, courts must order competency examinations when there is a question about a criminal defendant's ability to understand the court proceedings or assist in his defense. A clinical team examines the defendant and submits a court report.

Among other things, reports must indicate the team's opinion whether there is a substantial probability that, if treated, an

incompetent defendant will regain competency (i.e., is “restorable”) within the time he can be held (the lesser of 18 months or the maximum jail sentence for the crimes charged). If the report indicates that the defendant is restorable, it must also include the team’s opinion whether he appears eligible for civil commitment.

Courts must hold a hearing within 10 days of receiving the clinical team’s report. If the defendant appears restorable, the judge may place him either in Connecticut Valley Hospital’s Restoration Unit or the Department of Mental Health and Addiction Services (DMHAS) custody pending civil commitment.

The bill allows restorable defendants initially sent to the restoration unit to pursue civil commitment at a later time. The director of the treatment facility may file a progress report within 120 days of their restoration period indicating that the defendant appears to be eligible for commitment.

Currently, progress reports are filed when:

1. a competency hearing is scheduled,
2. the defendant has become competent to stand trial,
3. the treatment provider determines that the defendant is not restorable,
4. the probate court denies the application for civil commitment or DMHAS decides not to pursue it, or
5. a voluntarily committed defendant refuses to comply with his treatment plan.

In the last situation, the bill also adds the requirement that the treatment facility make reasonable efforts to encourage voluntary compliance before resorting to notifying the court.

Disqualifying Crimes

As under current law, civil commitment is not an option for those charged with the most serious felonies (Class A and B) or certain sex or motor vehicle offenses.

HEALTH CARE GUARDIANS FOR RESTORABLE DEFENDANTS

Current law requires the court to appoint a health care guardian before ordering the administration of psychiatric medication to a restorable defendant unable to give voluntary and knowing consent. The bill extends this requirement to restorable individuals who refuse to give their consent.

Health care guardians are licensed health care professionals with expertise in treating people with psychiatric disabilities. Representing the defendant's health care interests, they submit reports and recommendations to the court concerning the appropriateness of involuntarily medicating a defendant. By law, they must take into account its risks and benefits, possible side effects, and the defendant's prognosis without medication.

BACKGROUND

Civil Commitment Criteria

Probate courts have exclusive jurisdiction over applications to civilly commit a person claimed to have psychiatric disabilities. It may grant applications if, after a hearing, it finds by clear and convincing evidence that the person has psychiatric disabilities and is either (1) dangerous to himself or others or (2) gravely disabled. A person is gravely disabled if, as a result of his mental illness, he is in danger of serious harm due to his inability or failure to provide for his basic needs and is incapable of determining whether to accept necessary hospital treatment because his judgment is impaired by his psychiatric disabilities (CGS § 17a-495).

Involuntary Medication of Restorable Defendants

The purpose of restoration treatment is to enable an incompetent defendant to regain the ability to stand trial. It may include court-ordered involuntary medication. To issue such an order, the court

must find, by clear and convincing evidence, that:

1. to a reasonable degree of medical certainty, involuntary medication will render the defendant competent to stand trial,
2. an adjudication of guilt or innocence cannot be had using less intrusive means,
3. the treatment plan minimizes intrusion on the defendant's liberty and privacy interests,
4. the proposed drug regime will not cause an unnecessary health risk, and
5. the seriousness of the criminal charges is such that the state's interest in enforcing its criminal laws overrides the defendant's interest in self-determination.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/17/2006)